



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 10, 1998

Ms. Patricia Williams  
Assistant City Attorney  
City of Plano  
P.O. Box 860358  
Plano, Texas 75086-0358

OR98-2659

Dear Ms. Williams:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 119365.

You advise that on August 5, 1998, the City of Plano Health Department (the "department") received a request for all information relating to a complaint made regarding a dentist's disposal of bio-hazardous materials. Your letter notes that the requestor, who is the dentist in question, first made a written request for this information on June 2, 1998, and that you provided the requested information at that time with the name, address and telephone number of the complainant redacted. You indicate that, in releasing the redacted information in response to the June 2 request without seeking a determination from this office, you relied on "numerous opinions by the Attorney General and the Supreme Court."

Section 552.301 of the Government Code provides that when a governmental body receives a request for information that it wishes to withhold under an exception to disclosure, it must, within ten business days of the receipt of the request, "ask for a decision from the attorney general about whether the information is within the exception if there has not been a previous determination about whether the information falls within one of the exceptions."

When either a court or this office has not already determined whether standards for applying a particular exception in the Open Records Act embrace *particular information*, a governmental body seeking to withhold that information under that exception must request our decision as to whether it may do so. Open Records Decision No. 435 (1986). It is impossible for this office to determine whether and to what extent previous open record decisions govern requested information without first reviewing the information in question.

The ten business day time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. See Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. See, e.g., Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

You indicate that, in responding to the June 2 request for information regarding the complaint, you redacted information identifying the complainant in the belief that that information could be withheld under the informer's privilege aspect of section 552.101 of the Government Code. You now assert that privilege again in response to the August 5, 1998, request.

The informer's privilege serves to protect the flow of information to the government, not those persons who provide the information. Unlike other exceptions incorporated under section 552.101, it may be waived by the governmental body. Open Records Decision No. 549 (1990). Thus, a claim under the informer's privilege may not be the basis of a compelling demonstration that the information should not be made public.

You have raised no other exceptions to release of the information at issue here, nor is it confidential as a matter of law. Accordingly we find that by not seeking the determination of this office as to its exceptability within ten days of the June 2, 1998, request, the complainant identifying information became public. You may not now seek to withhold it in response to the instant request. It must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



William Walker  
Assistant Attorney General  
Open Records Division

WMW/ch

Ref: ID# 119365

Enclosures: Submitted documents

cc: Dale Selzer, D.D.S  
6861 Coit Road, Suite A  
Plano, Texas 75024  
(w/o enclosures)